

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MELVIN GOLDEN,

Defendant.

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Cv. No. 2:18-cv-2630-SHM-tmp

Cr. No. 2:12-cr-20326-SHM-1

**ORDER ADOPTING REPORT AND RECOMMENDATION,
DENYING MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL,
AND
DENYING MOTION TO COMPEL**

Before the Court is Movant Melvin Golden's Motion for Leave to Appeal *In Forma Pauperis* (hereinafter "IFP Motion") (ECF No. 7). The matter was referred to the Magistrate Judge for a determination. (ECF No. 8.) On May 16, 2019, the Magistrate Judge issued a Report and Recommendation. (ECF No. 9.) On May 29, 2019, Golden filed a Response to Report and Recommendation. (ECF No. 10.) On September 6, 2019, Golden filed a Motion to Compel the district court to respond. (ECF No. 11.) For the reasons stated below, the Report and Recommendation is ADOPTED, and Golden's IFP Motion is DENIED. Further, Golden's Motion to Compel the district court to respond is DENIED as moot.

These proceedings began with a letter filed in Golden's criminal case (Cr. No. 2:12-cr-20326) in which Golden asserted that he was improperly found to be a career offender. (Cr. No. 12-20326, ECF No. 36.) The Court construed this letter as a § 2255 Motion, and Golden was

ordered to amend his motion and file on the official form.¹ (See ECF No. 40.) The case was given a civil docket number as a § 2255 Motion. (See Civ. No. 18-2630.) Golden failed to file an amended motion on the official form, despite two orders directing him to do so and the warning that failure to do so could result in dismissal. (See ECF No. 1-2; *see also* ECF No. 4 at PageID 10.) The case was dismissed without prejudice. (ECF No. 5.) Golden did not file a notice of appeal.

In response to the Report and Recommendation, Golden asserts that he did not know how to proceed in federal court because he had already filed a § 2255 Motion and been denied authorization to file a second or successive motion. (ECF No. 10 at PageID 34.) He argues that his prior state conviction does not fall under U.S.S.G. § 4B1.1 and that he needs a federal public defender's assistance in pursuing his claim. (*Id.* at PageID 35.)

In Golden's motion to compel, he asserts that he is entitled to relief under *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019). (ECF No. 11 at PageID 37-38.)

The Magistrate Judge determined that Golden has not met the technical requirements for filing a motion for leave to proceed *in forma pauperis* on appeal. (See ECF No. 9 at PageID 32.) Golden does not articulate any error in the Report and Recommendation. He asserts that he continues to seek review of his claim about his career offender status. He asks the Court for mercy with regard to his failure to prosecute. (See ECF No. 10 at PageID 35.)

The Magistrate Judge correctly analyzed the law as it applies to the IFP Motion. Further, Golden's IFP Motion demonstrates his ability to pay the appellate filing fee. (See ECF No. 7 at

¹ Golden had previously been denied relief under § 2255. (See Civ. No. 14-2403, ECF No. 8.) He had also been denied authorization to file a second or successive § 2255 motion. (ECF No. 24.)

PageID 19; *see* ECF No. 7-1 at PageID 21.) The Court ADOPTS the Magistrate Judge's Report and Recommendation and DENIES the IFP Motion.

To the extent Golden seeks to compel the Court's order on the Report and Recommendation, this Order makes his request moot. The Motion to Compel (ECF No. 11) is DENIED as moot.

IT IS SO ORDERED, this 24th day of October, 2019.

s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE